

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

ZURICH AM. INS. CO.,

Plaintiff,

v.

CMS LOGISTICS, INC.,

Defendant.

No. 24cv5793 (EP) (MAH)

**MEMORANDUM ORDER**

Pending before the Court is a motion for default judgment under Rule 55 of the Federal Rules of Civil Procedure submitted by Plaintiff Zurich American Insurance Company against Defendant CMS Logistics, Inc. D.E. 9 (“Motion”). Because Plaintiff moved for default judgment without first requesting an entry of default, the Court will **DENY** Plaintiff’s Motion *without prejudice*.

A Court may enter a default judgment against a properly served defendant who fails to appear or respond. Fed. R. Civ. P. 55(b)(2). However, before a court enters default judgment, the movant must meet certain procedural and substantive requirements. “First, a party requests an entry of default, and the Clerk makes a judgment . . . following the Clerk’s entry of default, the party must submit a motion for default judgment to the Court.” *Int’l Union of Painters & Allied Trades Dist. Council 711 Health & Welfare, Vacation & Finishing Trades Inst. Funds v. Vill. Glass, Inc.*, No. 11-1023, 2012 WL 209076, at \*1 (D.N.J. 2012) (citing Fed. R. Civ. P. 55(b)(2)). In other words, “[p]rior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).” *Husain v. Casino Control Comm’n*, 265 F. App’x 130, 133 (3d Cir. 2008) (emphasis added).

Courts have routinely denied motions for default judgment where movants failed to follow this procedure. *See, e.g., Limehouse v. Delaware*, 144 F. App'x 921, 923 (3d Cir. 2005) (“[T]he District Court properly denied the motion [for default judgment] because [plaintiff] failed to obtain entry of default prior to seeking a default judgment.”); *see also Int’l Union of Painters*, 2012 WL 209076, at \*1 (collecting cases). Such is the case here. A review of the docket confirms that Plaintiff failed to request a Clerk’s Entry of Default.

**IT IS**, therefore, on this **8<sup>th</sup>** day of April 2025,

**ORDERED** that Plaintiff’s motion for default judgment is **DENIED** *without prejudice*; and it is further

**ORDERED** that Plaintiff may refile its Motion, D.E. 9, following a request and entry of the Clerk’s Entry of Default.



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Evelyn Padin, U.S.D.J.